

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

**Association of Community Organizations
for Reform Now**

Employer
and

Case No. 2-RC-23050

Negation of the Negation

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a Hearing Officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record¹ in this proceeding, it is found that:

1. The Hearing Officers' rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated and I find that the Association of Community Organization for Reform Now, Petitioner herein, an Arkansas corporation with facilities throughout the United States including the facility at 88 Third Avenue, Brooklyn, New

¹ Briefs have been filed by the Petitioner and the Employer and have been duly considered.

York, is a non-profit, community-based membership organization engaged in organizing for low and moderate-income people to improve their lives. Annually the Employer derives gross revenues in excess of \$250,000 and purchases goods and supplies valued in excess of \$5,000 directly from suppliers located outside the State of New York. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that Negation of the Negation, the Petitioner herein, is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) of the Act.

5. The Petitioner seeks an election in a unit consisting of all full-time and regular part-time organizers and canvassers employed by the Employer at its facility located at 597 East 139th Street, Bronx, New York (the “Bronx facility”), but excluding all other employees, guards, managers and supervisors as defined in the Act.² The Employer contends that the petitioned-for unit is not an appropriate unit for collective bargaining, and that the only appropriate unit consists of the above-described employee classifications at all the Employer’s facilities in the metropolitan New York area, which include: the Bronx facility; the office at 88 Third Avenue, Brooklyn, New York (the “Brooklyn facility”); and an office in Hempstead, New York (the “Long Island facility”).³

² The Petition was amended at hearing to exclude from the Petition the job classification of consultant.

³ The Petitioner stated at hearing that it is not prepared to proceed to an election in a unit found to be appropriate by the Regional Director which is larger than the petitioned-for unit. The parties have stipulated that there is no bargaining history between them.

The Employer's Operations

The Association of Community Organizations for Reform Now, commonly referred to as ACORN, is a national, membership-based organization. ACORN's four national offices are located in New Orleans, Washington, D.C., Phoenix, and Brooklyn. The purpose of the organization is to engage in community activism on behalf of low-to-moderate-income persons. The primary areas of activism include affordable housing, tenants' rights, predatory lending and education.

New York Acorn ("NY ACORN") is a chapter of the national organization. NY ACORN's main office is located at the Brooklyn facility. It also maintains satellite offices at the petitioned-for Bronx facility and the Long Island facility.⁴ NY ACORN's activities are primarily structured as campaigns, projects, programs or canvasses of varying lengths and purposes. A canvass is usually neighborhood-specific; however a campaign, project or program can cover one or more boroughs and counties.

Personnel

Bertha Lewis is the executive director of NY ACORN. She is responsible for more than half of the Employer's New York State operation, including the New York City metropolitan area. NY ACORN also employs a statewide head organizer named John Kest, who is at the same organizational level as Lewis.

The record identified several titles working below Lewis, including regional canvass director, statewide campaign director, campaign director, canvass director,

⁴ The record also reveals that there are satellite offices in Buffalo and Patchogue, Suffolk County, New York. Neither the Petitioner nor the Employer has sought to include those facilities in their respective proposed units.

field manager, lead organizers,⁵ organizers and canvassers. There are senior staff meetings once a week, which exclude organizers and canvassers. Goals, standards and strategies for each project are developed at senior staff meetings. The senior staff then communicates these goals and instructions to employees for an upcoming event. All projects, including those proposed by senior staff, are initiated and/or approved by NY ACORN's governing board, Lewis or Kest.

The Employer also conducts a general staff meeting once each week. All staff members working in any of the three offices are in attendance at these weekly meetings, which are primarily conducted by Lewis.

Ann Sullivan, the statewide campaign director, has been working on two housing projects in the Bronx, as well as projects in Manhattan's Washington Heights section, Hempstead and Buffalo. While Ms. Sullivan mainly works out of the Brooklyn office, she at times works out of the Hempstead facility.

Greg Basta is the regional canvass director. His primary responsibility is to oversee the canvass directors and canvassers in New York's downstate region. Basta spends the vast majority of his time traveling in the field. He mainly checks in with the Brooklyn office, but will report to a particular satellite office in setting up a canvass as necessary. Mr. Basta also maintains an office in the Bronx facility. He determines campaign logistics, rectifies general campaign problems, keeps regular contact with canvass directors, and gathers information on canvasser performance.

Canvass directors are Mr. Basta's assistants, and are generally associated with particular offices. As such, Toby Rivera is associated with the Bronx office; Ray Whalen

⁵ The record refers alternatively to lead organizers as supervisors. However, supervisory status under the Act is not an issue in the present matter.

with the Long Island facility office; and John York with the Brooklyn office. Basta also stated that canvass director Ashana Cumberbatch works about 60 percent of the time in Hempstead, and 40 percent of the time in Brooklyn. The canvass director's main job is to direct training when Basta is not present, and to take canvassers out to the field. A canvass director has authority to train and deploy canvassers. The vast majority of a canvasser's time is spent in the field.

Field Managers work under canvass directors and are responsible for helping to train canvassers.

There are several senior lead organizers employed by the Employer. Peter Santiago is the state-wide director of training and recruitment, and works primarily from the Bronx facility. Harold Miller is the lead staff organizer on education and community organizing. Marianna Davenport, who reports mainly to the Brooklyn facility, is the lead organizer responsible (in the education unit) for after-school programs in Brooklyn, Manhattan, and the Bronx. Davenport also does some recruitment and training. America Canas leads the home daycare organizing program, and oversees eight to ten organizers on that campaign. Octavio Rivera is responsible for canvassers deployed in Queens, Manhattan and Bronx and on occasion those working in Brooklyn.

Heather Appel supervises immigration and education organizers city-wide. She works from the Bronx office because most of her projects and membership are located there. She oversees approximately ten fulltime organizers in the Bronx office, and any other employees who work on the immigration campaign, regardless of office.

An organizer is expected to build neighborhood groups, develop issue campaigns, identifying neighborhood leadership and maintain member base. Once an

organizer identifies an issue, he or she must discuss it with Lewis, who decides whether and how the Employer should proceed. Organizers normally arrive at work between 11:00 a.m. and noon. At that time, organizers make telephone calls, do paperwork and attend training or a brief meeting, in which lead organizers would review fieldwork standards and give instructions on forthcoming events. By about 2:00 p.m., the organizers go to the field. Organizers normally return to the office between 7:30 and 8:30 p.m. Sometimes the organizer would have a meeting in the field and return directly home after the meeting. On Saturdays, organizers bypass the office and go directly out to the field.

A canvasser's job is to go from door to door to sign up new members, request donations or inform people of particular issues. Membership solicitation quotas are established by Lewis and Kest. According to Basta, a canvasser normally checks in to the office at about 3:00 p.m. Training is then conducted for about 30 to 40 minutes, after which the canvassers go into the field. The canvasser's shift ends at around 9:00 p.m., at which time they check in with the canvass director to hand over paperwork and money collected during the day. Basta estimated about "90 percent" of the canvasser's time is spent in the field.

Facilities

The Brooklyn facility covers about 7000 square feet and houses all NY ACORN's payroll records, accounting functions, administrative functions, legal documents and other components of the statewide and national operations. Supplies for the satellite

facilities are purchased through the Brooklyn office. NY ACORN maintains no separate budget or billing for the satellite offices.

The Bronx facility consists of a large space with tables and telephones. There is a meeting space in the back of the office. There are also two separated offices, which may be shared among supervisors, but are normally they are occupied by Appel and Santiago. These offices may be locked when not in use. Because the rooms have computers, employees can use the offices only with permission from Appel. There is neither a receptionist nor reception desk at the Bronx facility; and the answering machine identifies the facility as the "Bronx/Manhattan ACORN office." On average, 20-30 organizers and canvassers check in at the Bronx per day. Appel stated that there are eleven full-time organizers reporting to the Bronx office.⁶

The Long Island facility is a smaller office consisting of two and a half rooms, a telephone and fax machine.

Personnel Functions

Lewis sets the labor relations policy for the New York City metropolitan area. She determines rates of pay based on the national scale, with adjustments for cost of living and perhaps individual expertise. Employees receive a standard employment package, and NY ACORN buys into a national ACORN health benefits package. NY ACORN has also used a nationally-established staff policy, but adopted for the New York area.

⁶ From April through December 2004, no one reported to the Bronx office. All employees reported to the Brooklyn facility, and the Bronx facility was used only night for phone banking. The Employer provided testimony indicating that the Employer might close the Bronx facility in January 2006.

Personnel files are primarily kept in Brooklyn office. Each canvasser and organizer fills out a daily field report uniquely tailored for NY ACORN, and submits it to their lead organizers, who transmits them to the Brooklyn office. Blank time sheets are kept at different facilities; however, once filled out, the documents are all kept in the Brooklyn office. Paychecks for all New York City area facilities are distributed from Brooklyn office. Vacation leave must be approved by the Brooklyn office.

Hiring

Lewis may direct Santiago to recruit and train a certain number of organizers and canvassers based on the needs of a particular project, canvass or campaign. Jobs are advertised through newspaper advertisements and recruitment flyers, which are produced from the Brooklyn office, and cover NY ACORN's metropolitan New York activities. Lewis may also direct Santiago, Davenport or another lead organizer to attend college fairs.

Santiago preliminarily reviews all resumes and selects the most appropriate candidates for consideration. Santiago then confers with Lewis, who directs Santiago to continue the application process. This entails sending a candidate out for a day to observe organizers and canvassers. If thereafter the candidate expresses interest, Santiago will contact Lewis. Lewis will ask Santiago questions about the candidate's qualifications and, if the two agree, the candidate will be hired. Santiago then sends papers to Lewis who may or may not accept Santiago's recommendation. However, Lewis ultimately approves new hires and can countermand the recommendations of senior staff. Depending on the volume of applicants, Lewis reviews applications and checks references before or during the interview process. During a nine-month period

in 2005, Appel did the majority of the candidate interviews out of the Brooklyn office. Appel stated that Lewis or Kest has denied Appel's recommendations to hire certain candidates. Basta stated that he directs who is hired among canvassers after consulting with Lewis and Kest.

Training

Training is organized mainly by Santiago, and may occur in any facility. Lewis, in conjunction with managers and supervisors, decides where to train employees and where they will be deployed. Some new hires are cross-trained by moving them to other offices for greater experience. The new hire will spend the first week canvassing, and the second week in classroom training and observing organizers. Much of the training materials come from the national ACORN organization to make training uniform. After training, Lewis consults with coworkers and supervisors to decide whether to keep the new hire.

Assignment of Work and Supervision

An employee who starts out as a canvasser may move into the organizer position. Ultimately, Lewis makes the decision, but after getting recommendations through discussions with senior staff.

Lewis stated that she determines assignments based on the demands of a particular project, on the employees' skills or ability, and pursuant to a monthly plan developed by Lewis. However, much of the time, a "great deal of the consideration" about where to locate an employee is where he or she lives. Basta tries to provide "stability" to employees by having employees who live near the Bronx office report there.

Although an employee may normally check in at one particular office, organizers and canvassers may be moved to a project requiring check-in elsewhere. Lewis estimated that, during a six month period, an employee who normally checks in at the Bronx office may be assigned “two or three times” to another facility. The record further shows that an employee’s supervisor may be determined by the project, campaign or canvass to which the employee is assigned. Consequently, an employee who regularly reports to one location may be directly supervised by a lead organizer or canvass director who is not located in that office.

The Employer hired Milka Baez as a fulltime organizer in July 2005, and assigned her work on immigration petitioning. Baez reported to the Brooklyn immigration office under the supervision of Julie Roberts. Thereafter, the Employer assigned Baez to the child-care organizing effort where she worked out of the Bronx office under the supervision of America Canas. Canas who works from the Brooklyn office, supervised Baez by phone. Appel stated that a vast majority of Baez’s field work is outside of the Bronx.

Organizer Theresa Okeh worked three to four months on a campaign to unionize child-care providers. During that time, she reported exclusively to the Brooklyn office under the supervision of Canas. After a certain organizing quota was reached, the Employer directed Okeh to work in the Bronx office. Okeh stated that only some of the approximately twenty employees working with her in the Brooklyn office were transferred with Okeh to the Bronx facility. She was offered a position in the Bronx because she lived there.

Basta stated he that directs canvassers, like “special forces,” to go quickly anywhere where needed, regardless of the canvasser’s normal check-in location. For example, Basta stated that, in around November 2005, Spanish-speaking canvassers who generally reported to the Bronx were assigned to Brooklyn to work on the Bushwick Houses campaign. In April and October 2005, about eleven canvassers and canvass directors from the Bronx, Brooklyn and Long Island offices were assigned to work on the Gracie Point environmental campaign. During this canvass, the canvassers met and trained in Manhattan.

Get Out The Vote campaigns, which have occurred during primary and general election seasons, represent another example of the Employer assigning organizers and canvassers to locations other than where they normally report. During these campaigns, canvassers from each office report to temporary staging areas in Corona (a three-month campaign), Far Rockaway (a six-week campaign) and Rosedale (a five-day campaign). The Corona campaign used at least five canvassers from the Bronx and Brooklyn offices. Furthermore, during one Get Out the Vote campaign, organizer Baez reported to the Brooklyn office under the direction of Basta. Organizer Bonita Garcia, who checks in at the Bronx office most days, was assigned to Sunset Park, Brooklyn, during one Get Out The Vote campaign.

Several times during 2005, canvasser Yancairo Nunez, who reports normally to the Bronx office, reported to several areas during various campaigns. Nunez was deployed from Brooklyn on the Bushwick Houses campaign; from Manhattan on the Grace Point campaign; and from Brooklyn, East Harlem and Rosedale for Get Out The Vote efforts. Basta further identified three other organizers (Luisiana (LNU), Vanessa

Tucker and Jason Hamaad) who, during October and November 2005, worked in the Bronx under one canvass director and in Brooklyn under another.

Canvassers are cross trained by temporary transfers to offices to which they do not normally report. In this regard, in October 2005, canvasser Jeffrey Caregno, who works normally from the Bronx office, trained for about a week in the Brooklyn office under canvass director John York.

On the city-wide immigration project, Appel directly supervised about five organizers who normally checked into the Bronx, Brooklyn or Long Island offices. Appel also spent time in various offices meeting with immigration organizers. Appel has also met with immigration project organizers after the weekly general staff meeting. Organizer Noel Rodriguez, who normally reports to the Bronx office, worked for a month in Brooklyn in the Bushwick Houses campaign, and then reported to a temporary facility in Queens. Rodriguez presently works in the Fix It Now campaign, which is mostly directed from Brooklyn.

Discipline and Discharge

Appel may write up an employee and recommend termination, but Lewis or Kest makes the final decision. Basta directs who is fired among canvassers after consulting with Lewis and Kest. He must submit termination forms to Lewis or Kest, but neither has overturned any of his initial decisions to discharge. Basta further stated that canvass directors may engage in some on-the-spot discipline. However, one canvasser has been reprimanded for firing an employee without authority.

Employee Pamela Drummond identified one incident of a discharge of Eduardo Rodriguez. At a staff meeting, when Rodriguez complained that certain work was hard,

Santiago became angry at Rodriguez and told him to go home. Santiago testified that, prior to this incident, Rodriguez had a history of insubordination, which had been reported to Lewis. At one point, Lewis directed Santiago to fire Rodriguez the next time he was insubordinate, which is what Santiago did at the meeting in question. After the meeting, Santiago called Lewis to inform her. Lewis agreed with the firing and said she would process the paperwork. A discharge letter for Dakem Roberts (Petitioner's representative) was prepared by Santiago at the direction of Lewis.

Analysis

As a general rule, a single-plant unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated that it has lost its separate identity. *J&L Plate, Inc.*, 310 NLRB 429 (1993). To determine whether the presumption has been rebutted, the Board considers such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999). Furthermore, "the party seeking to overcome the single-site presumption must show that the day-to-day interests of the employees at the sought locations have merged with those employees of the other locations." *Renzetti's Market, Inc.*, 238 NLRB 174, 175 (1978). Analyzing the facts here in light of the applicable criteria, I find that the Employer has rebutted the single-facility presumption.

The record establishes that the Employer's business is highly integrated and administratively centralized in the Brooklyn office under the auspices of the NY ACORN chapter. NY ACORN management centrally develops and uniformly applies policies and procedures in the matters of hiring, employee training, membership quotas, wages, hours, leave, and employee benefits. See *Renzetti's Market*, supra at 174.

However, the Board considers "most relevant" the extent of autonomous supervision at the petitioned-for facility. In other words:

whether or not the employees at the sought [facility] perform their day-to-day work under the immediate supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems.

Renzetti's Markets, supra at 175. See *New Britain Transportation*, supra at 397 ("[c]entralized control over personnel and labor relations alone . . . is not sufficient to rebut the single-location presumption where the evidence demonstrates significant local autonomy over labor relations.")

Here, the evidence shows that the day-to-day matters affecting organizers and canvassers are not determined with significant autonomy at the Bronx facility. Assignment to a campaign or canvass is determined centrally by Lewis, Kest and Basta.⁷ Hiring, wages, initial training, promotion, discharge and significant discipline are ultimately determined Lewis, Kest and Basta. The record reflects that senior staff at the Bronx facility may directly monitor an employee's work, and do have some day-to-day control over an employee's working conditions, such as daily training, problem-solving

⁷ Although Basta keeps an office at the Bronx facility, the record shows that his management position is city-wide rather than facility-specific.

and field coordination. However, contrary to Petitioner's assertions, these decisions appear dictated by the Employer's centralized policies and directives rather than a lead person's separate supervisory authority.⁸ See *Globe Furniture Rentals*, 298 NLRB 288 (1990) (single-facility presumption rebutted because store managers only had "authority over routine day-to-day operations of the facilities" and because of significant mandatory employee interchange); *Petrie Stores Corp.* 266 NLRB 75 (1983) (single-facility presumption rebutted where store manager's authority was "circumscribed" by area supervisor's authority in personnel matters; store manager had no involvement in, among other things, granting leave and grievance handling); *VIM Jeans*, 271 NLRB 1408 (1984) (single-facility presumption rebutted where there was evidence that stores were controlled "very closely" by central management and roving managers.)

Other factors, although not by themselves determinative, support a finding here that the Employer has rebutted the single-facility presumption. The Employer has shown that organizers and canvassers who normally report to the Bronx location because it is close to their homes are temporarily assigned, on a regular basis, to campaigns and canvasses in other boroughs. Furthermore, these assignments require them to check-in to other facilities, and work closely with employees from other offices under the supervision of senior staff from other facilities. See *Budget Rent A Car*

⁸ The Petitioner also argues that the Employer failed to submit a payroll list prior to the Region's showing-of-interest determination and is therefore "precluded from making any claims relevant to the appropriateness of the bargaining unit." The Region's standard request of a payroll list is only relevant to the threshold administrative determination of a showing of interest prior to proceeding with processing of the petition. Whether or not the Employer provides such a list prior to hearing does not bear on the arguments and position which the Employer is entitled to advance at hearing regarding the appropriateness of the unit.

Petitioner further argues that testimony regarding a possible closure of the Bronx facility reveals an unlawful attempt to avoid unionization. However, litigation of such alleged unfair labor practices is inappropriate to a representation proceeding.

Systems, 337 NLRB 884 (2002) (contact and coordination among employees from separate facilities is a factor in rebutting single-facility presumption).

Furthermore, the record shows that the duties, skills and job requirements of organizers and canvassers are identical in each of the Employer's facilities. See *R&D Trucking, Inc.*, 327 NLRB 531 (1999) (considering interchangeability of employee skills between locations a factor in favor of multi-facility unit). The geographical proximity of the Employers' facilities, especially in light of the city-wide nature of certain of Employer's campaigns, also favors a multi-location unit. See *Twenty-First Century Restaurant*, supra at 882 (single-facility presumption rebutted where seven McDonald's restaurants were located within a 10-mile radius); *The Pep Boys*, 172 NLRB 246 (1968) (single-facility presumption rebutted where the sought store and five other of the Employer's stores lie within a distinct geographic area).

Based upon the record, I find that the petitioned-for unit is not appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Because Petitioner does not seek an election in a larger unit, I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED, that the Petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor

Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by April 10, 2006.

Dated at New York, New York,
March 27, 2006

/s/

Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278